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No. 03-1696

Supreme Court, U.S.
FILED
AUG 3 - 2004
CLERK

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION,
EXXON CHEMICAL ARABIA, INC., AND
MOBIL YANBU PETROCHEMICAL COMPANY, INC.,
Petitioners,

v.

SAUDI BASIC INDUSTRIES CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. THIS CASE PRESENTS A PURE QUESTION OF LAW WITH BROAD IMPLICATIONS THAT THE THIRD CIRCUIT DECIDED IN CONFLICT WITH OTHER CIRCUITS.

The Court should grant the petition because this case squarely presents the important legal question whether the *Rooker-Feldman* doctrine divests federal courts of jurisdiction solely because a pending state-court proceeding presents identical issues. The Third Circuit's sua sponte application of *Rooker-Feldman* is grounded solely in the court's serious misperception that the doctrine may be applied

as a form of preclusion. That misperception brought the Third Circuit into conflict with other courts of appeals that have correctly restricted application of *Rooker-Feldman* to cases in which the federal plaintiff seeks review of a state-court decision in a federal district court. ExxonMobil prevailed in the Delaware state-court action and has sought no review of that favorable judgment in federal court. Under a proper construction of the doctrine, there was no permissible basis on which the *Rooker-Feldman* doctrine could possibly apply to this case.

Contrary to SABIC's assertion, the court of appeals's decision was not factbound. The only fact relevant to the court of appeals's holding is the undisputed fact that the Delaware and federal actions raise identical claims arising from SABIC's overcharging the joint ventures. Pet. App. 6a. That basic scenario—the existence of identical or overlapping claims in parallel federal and state litigations—is certain to recur often under the congressionally crafted jurisdictional structure that provides for concurrent jurisdiction in many cases. *See, e.g.*, *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970) ("[T]he state and federal courts had concurrent jurisdiction in this case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts.").

Under the Third Circuit's application of *Rooker-Feldman*, the identity of claims in the federal and state actions—standing alone—is sufficient to impose the jurisdictional bar. Although the court of appeals purported to focus on the fact that ExxonMobil's claims had already been "actually litigated" in the Delaware superior court, Pet. App. 8a, it could not have found that ExxonMobil sought federal appellate review of that decision because—as the court acknowledged—ExxonMobil prevailed at the Delaware trial. Only by speculating that ExxonMobil might in the future seek review of a potential adverse decision by the Delaware Supreme

Court could the court even hypothesize a possible future application of *Rooker-Feldman*. *See id.* But that hypothetical approach—grounded not in ExxonMobil's request for federal review of the Delaware judgment but instead in the mere possibility that ExxonMobil might *someday* seek such review—brings the Third Circuit's *Rooker-Feldman* jurisprudence into direct conflict with that of other circuits and this Court.

The Third Circuit is now in direct conflict with the Sixth, Seventh, and Ninth Circuits, which apply *Rooker-Feldman* only when the federal plaintiff's claim is that the state-court judgment itself caused injury. *See Stemler* v. *Florence*, 350 F.3d 578, 589 (CA6 2003); *Noel* v. *Hall*, 341 F.3d 1148, 1163 (CA9 2003); *GASH Assocs.* v. *Vill. of Rosemont*, 995 F.2d 726 (CA7 1993). In conflict with the Fourth and Ninth Circuits, the Third Circuit has now applied *Rooker-Feldman* preemptively when the relevant state court has not yet rendered a decision. *See Noel*, 341 F.3d, at 1165; *Am. Reliable Ins. Co.* v. *Stillwell*, 336 F.3d 311, 319-20 (CA4 2003) (requiring that a state court have rendered a relevant decision before *Rooker-Feldman* would apply); *Vulcan Chem. Techs., Inc.* v. *Barker*, 297 F.3d 332, 338 n. 2 (CA4 2002) ("It would be a novel application of the already beleaguered *Rooker-Feldman* doctrine to divest a federal court of subject matter jurisdiction simply because a parallel case was later filed in State court seeking to decide the same question."). In conflict with all those circuits, although in accord with at least the Second Circuit, the Third Circuit found that ExxonMobil's claims fell within the scope of *Rooker-Feldman* for no reason other than that those claims would fall within the scope of ordinary res judicata principles. *Compare Stemler*, 350 F.3d, at 589 (distinguishing *Rooker-Feldman* from preclusion); *Noel*, 341 F.3d, at 1160-61 (same); *Am. Reliable*, 336 F.3d, at 318 (distinguishing *Rooker-Feldman* and preclusion, although noting there is overlap); *GASH*, 995 F.2d, at 728 (distinguishing *Rooker-Feldman* from preclusion), *with Moccio* v. *N.Y. State Office*

of Court Admin., 95 F.3d 195, 198-99 (CA2 1996) (describing *Rooker-Feldman* as at least coextensive with preclusion and concluding "[i]f the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, *Rooker-Feldman* plainly will bar the action.").

SABIC urges the Court to disregard the change in the Third Circuit's view of *Rooker-Feldman*, pointing to a prior opinion in which that circuit expressed greater cognizance of the distinction between *Rooker-Feldman* and preclusion. SABIC BIO 6-7 (citing *Parkview Assocs. P'ship* v. *City of Lebanon*, 225 F.3d 321, 328-29 (CA3 2000)). But the Third Circuit's latest pronouncement on the doctrine—this case—departs from the distinction made in *Parkview* and embraces an expansive view of *Rooker-Feldman* that conflicts with circuits holding that the doctrine only applies when the federal plaintiff is asserting an injury caused by a state-court judgment already made. Despite the court of appeals's statements purporting to "take[] a narrow view of the *Rooker-Feldman* doctrine," Pet. App. 6a (citing *Parkview*, 225 F.3d, at 326), it could not have reached its holding in this case without conflating the scope of *Rooker-Feldman* with that of preclusion and applying *Rooker-Feldman* simply because identical claims were pending in the parallel state proceeding. The Third Circuit, the Second Circuit, and perhaps the Tenth Circuit, *see Merrill Lynch Bus. Fin. Servs., Inc.* v. *Nudell*, 363 F.3d 1072, 1075 (CA10 2004), are now in direct conflict with those circuits that do not treat *Rooker-Feldman* and res judicata as coextensive and with *D.C. Court of Appeals* v. *Feldman*, 460 U.S. 462, 487-88 & n.19 (1983) (holding that certain claims that might be barred by res judicata were not barred by *Rooker-Feldman*).

The Third Circuit's reformulation of *Rooker-Feldman* has real consequences and broad implications. *Rooker-Feldman* properly applies only when "the losing party's claim [is] that the state judgment itself violates the loser's federal rights."

Johnson v. *De Grandy*, 512 U.S. 997, 1005-06 (1994). When overlapping or identical claims exist in federal and state court, and *Rooker-Feldman* does not properly apply, the federal district court has jurisdiction over the claims and may allow the case to go forward, abstain, stay the overlapping claims, or determine whether state preclusion law bars a party against whom the affirmative defense of res judicata is raised from relitigating a substantive issue lost (or that could have been raised but was not) in a previous adjudication. *See Noel*, 341 F.3d, at 1159, 1166; *Garry* v. *Geils*, 82 F.3d 1362, 1367 n.8 (CA7 1996).[1] But the improper expansion of *Rooker-Feldman* erroneously makes the determination a jurisdictional issue and infringes on the district court's authority to apply other, nonjurisdictional solutions—like preclusion, stay, or abstention. There is simply no basis in this Court's decisions or in the majority of circuit decisions for the Third Circuit's improper expansion of *Rooker-Feldman* to infringe on the full panoply of nonjurisdictional dispositions available to a federal district court when identical claims are asserted in both state and federal court.

Attempting to defend the Third Circuit's application of *Rooker-Feldman* puts SABIC in the topsy-turvy position of tenaciously asserting the preclusive effect of the Delaware trial court's $416.8 million judgment against it. *See* SABIC BIO 13. SABIC's argument that both *Rooker-Feldman* and res judicata would bar ExxonMobil from asserting claims because it already prevailed on those claims turns both doctrines on their heads. Instead of applying the doctrines to

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[1] SABIC overstates dicta from *Arizona* v. *California*, 530 U.S. 392 (2000), to suggest that res judicata is not considered a waivable affirmative defense in virtually all cases. *Arizona* merely noted that a court's raising of res judicata sua sponte "*might* be appropriate in *special circumstances*." *Id.*, at 412 (emphasis added). By contrast, a federal court is obligated to examine its own subject matter jurisdiction in all circumstances.

bar a losing party from overturning a judgment previously made against it, SABIC would apply them to prevent ExxonMobil from maintaining a position fully *consistent* with a previous judgment in its favor in the federal forum that has subject matter jurisdiction over ExxonMobil's claims under congressional mandate. In other words, SABIC seeks the Court's imprimatur on the Third Circuit's misapplication of doctrines actually designed to prevent a party like SABIC from relitigating issues it already lost.

Moreover, SABIC's further argument that the Third Circuit's misapplication of *Rooker-Feldman* makes no difference because a dismissal for lack of subject matter jurisdiction is without prejudice conflicts with SABIC's defense of the Third Circuit's *Rooker-Feldman* formulation. SABIC asserts that the preclusive effect of the Delaware trial court's judgment under Delaware law is sufficient to support the Third Circuit's holding applying *Rooker-Feldman*, but that preclusion would necessarily require dismissal *with* prejudice. Indeed, the court of appeals was unable to offer any plausible reason for applying the *Rooker-Feldman* doctrine to this case without acknowledging its speculative concern that Exxon Mobil might attempt to attack an adverse judgment that the Delaware Supreme Court might or might not make. That rationale has no limit and would apply equally when parallel claims are pending in a state trial court that might or might not render a judgment adverse to the federal plaintiff. Because the Third Circuit applied *Rooker-Feldman* based on the hypothetical possibility that the Delaware Supreme Court could reverse the superior court judgment, it is impossible to forecast whether such a hypothetical future judgment could raise either res judicata or *Rooker-Feldman* bars against the federal proceeding. Indeed, SABIC's primary argument in the Delaware Supreme Court seeks reversal on the basis of the Delaware statute of limitations—a ground for reversal that

even SABIC has acknowledged would carry no preclusive effect outside of the Delaware court system.[2]

Because the congressionally defined jurisdictional structure gives ExxonMobil every right to maintain its claims in the federal district court, *see, e.g.*, *Atl. Coast Line R.R.*, 398 U.S., at 295; *McClellan* v. *Carland*, 217 U.S. 268, 282 (1910), ExxonMobil was not required to capitulate to SABIC's improper forum shopping in rushing to file in Delaware state court, and ExxonMobil's consolidation of the usurpation claims with the preexisting litigation in New Jersey federal court can hardly be called "gamesmanship." SABIC BIO 10. Any inefficiencies that might result from a party's exercise of the right to concurrent state and federal litigation could, if appropriate, be "mitigated by a number of abstention doctrines that permit, and often require, a federal court to abstain in favor of state court litigation." *Noel*, 341 F.3d, at 1159. Contrary to SABIC's misleading argument, abstention is not equivalent to dismissal for lack of subject matter jurisdiction. An abstaining court stays its hand in the exercise of its subject matter jurisdiction "on principles of comity to the pending state proceedings." *Pennzoil Co.* v. *Texaco, Inc.*, 481 U.S. 1, 17 (1987). In this case, the federal district court's proceedings were already stayed pending resolution of the Delaware appeal, and ExxonMobil urged the court of appeals to stay the federal appeal as well. ExxonMobil has acknowledged at all times that it cannot seek a second recovery on the same claims if the Delaware Supreme Court affirms the judgment against SABIC, but ExxonMobil maintains its right

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[2] Both the New Jersey district court and the Delaware superior court harshly criticized SABIC's blatant forum shopping after it raced to file the Delaware declaratory judgment action solely in an attempt to invoke the Delaware statute of limitations. The fact that the claims were asserted in two jurisdictions was purely a result of SABIC's improper forum shopping, a gambit that proved to be a terrible mistake for SABIC. The Third Circuit's ruling both encourages and rewards such conduct.

to continue in the congressionally appointed federal forum if the Delaware judgment is reversed on procedural grounds.

Finally SABIC's repeated reliance on an alleged "admission" by ExxonMobil with regard to its claims in federal court, *e.g.*, SABIC BIO. 1, 8, attempts to import into the Third Circuit's *Rooker-Feldman* formulation a limiting principle that simply is not there and that, in any event, would not cure the conflict between applying *Rooker-Feldman* to bar a federal action merely because there is a parallel state action and the jurisdictional statutes that permit such parallel actions. Premising dismissal of a party's federal action on that party's unremarkable "admission" that it desires redress for its injuries in some court of competent jurisdiction cannot be squared with the jurisdictional structure providing for simultaneous prosecution of claims in state and federal courts. *See Atl. Coast Line R.R.*, 398 U.S., at 295.

II. THIS CASE IS THE PROPER VEHICLE FOR RESOLVING THE CONFLICT OVER *ROOKER-FELDMAN*.

Because it is undisputed that the claims in the parallel actions are identical, and because it cannot be disputed that the court of appeals's holding was founded on that fact, this case presents in the purest form possible the question whether the *Rooker-Feldman* doctrine divests federal courts of jurisdiction solely because a pending state-court proceeding presents identical issues. Contrary to SABIC's misrepresentations of the proceedings below, that question was both presented to and decided by the court of appeals.

ExxonMobil's letter brief—submitted in response to the court of appeals's raising questions regarding the application of *Rooker-Feldman* sua sponte the day before oral argument—expressly noted that ExxonMobil was not asking the federal district court to review the judgment of the Delaware trial court and that the speculative future scenarios

under which ExxonMobil might attempt to challenge the Delaware Supreme Court's judgment did not warrant application of *Rooker-Feldman*. ExxonMobil Letter Br., dated Dec. 18, 2003, 4-5.[3] In rejecting ExxonMobil's arguments, the court of appeals necessarily decided that the identity of claims in the two actions—at least given the speculative possibility of a future state-court judgment on those claims adverse to ExxonMobil—was sufficient to invoke *Rooker-Feldman*.[4] The court of appeals squarely —and erroneously—decided the question presented by the petition.

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[3] SABIC actually conceded this same point at oral argument. Tr. of Oral Arg., Dec. 9, 2003, 13 (SABIC's counsel stating "Exxon/Mobil isn't asking [the federal district] court to review anything at this point. *If* it asks that court to do anything that reviews a judgment of the Delaware court, then that would be, in our view, what triggers the *Rooker-Feldman* problem." (emphasis added)).

[4] Moreover, despite the disproportionate attention to the issue in the court of appeals's opinion, Pet. App. 7a-8a, the argument that Exxon Mobil Corporation could not be barred by *Rooker-Feldman* because it was not a party to the Delaware litigation appeared only in a one-sentence footnote in ExxonMobil's letter brief. ExxonMobil Letter Br., dated Dec. 18, 2003, 5 n.3. SABIC blatantly distorts the record by characterizing that point as one of two main arguments ExxonMobil raised in the court of appeals while ignoring ExxonMobil's actual main argument: that *Rooker-Feldman* cannot apply when no state-court judgment is being presently challenged. *See* SABIC BIO 12-13.

CONCLUSION

For these reasons, and those discussed more fully in the petition, the Court should grant the petition for writ of certiorari, reverse the court of appeals's judgment, and order ExxonMobil's claims to be reinstated.

Respectfully submitted,

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